In the High Court of Punjab and Haryana at Chandigarh

CUSAP No. 9 of 2007
Date of Decision: 6.11.2007

Commissioner of Customs, Amritsar …Appellant

Versus

M/s ATM International, Jalandhar …Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Sanjeev Kaushik, Advocate,
for the Appellant.

Mr. Jagmohan Bansal, Advocate,
for the Respondent.

JUDGMENT

M.M. KUMAR, J.

This is a custom appeal preferred by the revenue under Section 130 of the Customs Act, 1962 (for brevity, 'the Act'), challenging final order No. 1723/06-SM(BR), dated 1.12.2006 (Annexure P-3), passed by the Custom, Excise and Service Tax Appellate Tribunal, New Delhi (for brevity, 'the Tribunal). The revenue has claimed that the following substantial question of law would emerge for determination of this Court:-

"i) Whether order passed by the Tribunal is illegal, perverse and against statutory provisions of law, contained under Section 18(1)(a) of the FERA Act, 1973 and Customs Act?

ii) Whether the CESTAT is justified in dismissing the appeal of department by not considering that there

is no violation of provisions of Section 18(1)(a) of FERA Act, 1973 or the Notification issued there under?

iii) Whether party is not liable for penal action for availment of DEPB benefit/scrip on forged BCERs?

iv) Whether party has violated the provisions of Section 18(1)(a) of Foreign Exchange Regulation Act, 1973 or the notification issued there-under?"

Without adverting to the facts of the present appeal, we deem it just and appropriate to notice that another similar appeal bearing CUSAP No. 8 of 2007, challenging final order No. 1379-1398/06-SM(BR), dated 13.9.2006, passed by the Tribunal in the case of same assessee, has already been allowed by us on 23.8.2007.

The instant appeal also deserves to be allowed in terms of our detailed order passed in CUSAP No. 8 of 2007, decided on 23.8.2007. Accordingly, the questions of law are answered in the affirmative and accordingly the appeal is allowed. The view taken by the Appellate Authority and the Tribunal is set aside and that of the Adjudicating Authority is restored.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

November 6, 2007

Pkapoor